

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

TYLER McKINZIE DUFF EVERETT

PLAINTIFF

v.

CAUSE NO. 1:13CV375-LG-RHW

STATE OF MISSISSIPPI, et al.

DEFENDANTS

**ORDER SUSTAINING DEFENDANTS' OBJECTIONS TO REPORT AND
RECOMMENDATION AND GRANTING PLAINTIFF'S MOTION TO DISMISS**

On February 24, 2014, the plaintiff, Tyler McKinzie Duff Everett, filed a Motion to Dismiss his complaint against all defendants [Doc. 30]. This matter comes before the Court on the Report and Recommendation of United States Magistrate Judge John M. Roper entered in this cause on April 17, 2014. The defendants, Roger T. Clark, John C. Gargiulo, Lisa P. Dodson and the Mississippi Crime Lab have filed objections to certain proposed findings of fact and conclusions of law that they contend are in error. However, these defendants do not oppose dismissal of the plaintiff's underlying claims.

DISCUSSION

When any party objects to the Report and Recommendation, the Court must review the objected-to portions de novo. *See Kreimerman v. Casa Veerkamp, S.A. de C.V.*, 22 F.3d 634, 646 (5th Cir. 1994); *Longmire v. Guste*, 921 F.2d 620, 623 (5th Cir. 1991). Such a review means that the Court will consider the record which has been developed before the Magistrate Judge and make its own determination on the basis of that record. *United States v. Raddatz*, 447 U.S. 667, 675 (1980). The unobjected-to findings and recommendations are reviewed only to determine

whether they are either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

Although the magistrate judge has recommended that plaintiff's Motion to Dismiss should be denied, the Court finds that the Motion should be granted. *See Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir.2002) (citing *Manshack v. Sw. Elec. Power Co.*, 915 F.2d 172, 174 (5th Cir.1990))("[A]s a general rule, motions for voluntary dismissal should be freely granted unless the non-moving party will suffer some plain legal prejudice other than the mere prospect of a second lawsuit.").

However, the defendants correctly point out that Mississippi Circuit Court Judge Lisa P. Dodson, along with all of the defendant judicial officers, are entitled to absolute judicial immunity for any decisions taken pursuant to their official duties. The plaintiff concedes as much in his Motion to Dismiss. Accordingly, the Magistrate Judge's Report and Recommendation will be adopted as modified herein to reflect that these defendants are cloaked with absolute judicial immunity.

IT IS THEREFORE ORDERED AND ADJUDGED that pursuant to 28 U.S.C. 636(b)(1), after making a de novo determination of those portions of the report to which objection is made, the Court adopts the Report and Recommendation of United States Magistrate Judge John M. Roper entered in this cause on April 17, 2014, as modified herein. The plaintiff's Motion to Dismiss pursuant to Fed. R. Civ. P. 41(a)(2) is **GRANTED**. Circuit Court Judge Roger T. Clark, Circuit Judge John T. Gargiulo, and Circuit Court Judge Lisa P. Dodson are

entitled to absolute judicial immunity, therefore the plaintiff's claims against these defendants are **DISMISSED WITH PREJUDICE**. The plaintiff's claims against the remaining defendants are **DISMISSED**.

SO ORDERED AND ADJUDGED this the 9th day of September, 2014.

s/ *Louis Guirola, Jr.*

LOUIS GUIROLA, JR.
CHIEF U.S. DISTRICT JUDGE